IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1115 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAKULBHAI CHIMANBHAI CHAUDHARI - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant, MS NITA C BANKER for Appellant, MS.PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 25/09/2007

ORAL JUDGMENT

The present appeal is preferred under the provisions of Section 374 of the Code of Criminal Procedure by the appellant-accused who has been held guilty of the charge of the offence punishable under

Section 376 of the Indian Penal Code. The judgment and order of conviction and sentence has been passed in Sessions Case No.49 of 2002 on 29th August, 2003 by the learned Additional Sessions Judge, Vyara whereby the appellant-accused was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default of payment of fine to undergo three months rigorous imprisonment.

2. The appellant-accused has been represented by Ms.Nita Banker, who has been appointed by the High Court and has argued at length whereas the respondent-State has been represented by Ms.Pandit, learned A.P.P., who has also made her submission.

3. According to case of prosecution which mainly rests on the evidence of the witnesses that is victim and her husband that on the date of incident, that is, 25th May, 2002 the victim was aged about 34 years and accused was also of the same age. It is in evidence that both were knowing each other. Because the victim has admitted in her deposition that the house of the accused is in the same area where the victim house is located and on the date of incident she had been to lunch organize by one Anilbhai but

the victim has not expected that the appellant-accused was also there in the function. It is clear from the evidence of the victim that this Anilbhai was common family friend of the victim and the appellant-accused. So considering the totality and other aspects into account and when the learned trial Judge has found the version of the victim trustworthy to the incident this is not a case of consent. It is also submitted that the appellant-accused does not press this appeal so far as the order of conviction is concerned. But her say is that point of quantum of punishment should be considered keeping in mind the nature of evidence led by prosecution while linking the accused with the crime.

4. It is submitted by Ms.Banker that she does not press the present appeal so far as the order of conviction is concerned but according to her the quantum of punishment imposed by the learned trial Judge can be said to be too harsh. Of course the minimum punishment is of seven years in case of rape but the learned trial Judge was under obligation to observe that this is not a case where the punishment less than minimum prescribed can be awarded. It is submitted that accused is in prison since last more

than five years. He was granted bail pending trial and on the day on which the present appeal came to be admitted by this Court on 16th June, 2004 the Court had ordered that hearing of the appeal should be expedited but unfortunately the Court could not undertake the hearing of the appeal finally till the year 2007.

5. After reading the deposition of the victim and mainly the answer given by her during the course of cross-examination, she has admitted that this is not the gross case where the minimum punishment could have been imposed. The age of the victim and appellant-accused, their inter se relation, the place and time of the incident and the fact that the day on which the incident has occurred, the accused and the victim might have met each other prior to the incident on occasion at the residence of one Anilbhai, if the depositions of the victim and her husband closely read. The trial Court could have stated that this is a case where the punishment less than seven years can be imposed. Ms. Banker has also fairly accepted that punishment in respect of non-payment of amount of fine cannot be said to be too harsh. So lastly she has submitted that she does not

press this appeal in respect of conviction and Court may pass appropriate order in respect of sentence part.

5-A. Ms.Pandit, ld. A.P.P. submits that it is found proved that the act committed by the accused is rape within the meaning of Section 375 of the Indian Penal Code. The court is under obligation to assign reasons when it imposes minimum punishment in gross case and at the time of imposing more than prescribed punishment normally the Court should assign reasons and if the Court intends to decide that punishment less than minimum requires to be imposed and at that time only the Court should assign reasons and therefore the punishment is not required to be altered especially when the conviction has not been assailed by the appellant.

6. On close reading of the medical evidence and mainly the evidence of the victim and other aspects including the age of the victim and the narration of the incident that emerges from version of the victim before the Court, this Court is of the view that the trial Court could have felt satisfaction by imposing rigorous imprisonment for five years which could have

served the purpose. The husband of the victim is suffering from one disease known as tuberculosis and the family of the victim and her husband were indulging in the business of prohibited liquor. The victim has admitted in her deposition that on the date of incident they had brought materials which can be used in manufacturing country made liquor. So, keeping the totality in mind vis-a-vis the socio economic background of the parties, mainly the victim and his family, imposition of five years rigorous imprisonment would be adequate punishment.

7. In the result the present appeal is partly allowed. The judgment and order of conviction and sentence of fine passed by the learned Additional Sessions Judge, Fast Track Court, Vyara in Sessions Case No.49 of 2002 on 29th August, 2003 for the offence punishable under Section 376 of the Indian Penal Code is hereby confirmed. The sentence imposed for non-payment of amount of fine is also confirmed.

7.1 Whereas, the judgment and order of sentence for the offence punishable under Section 376 of the Indian Penal Code is hereby altered and reduced to the five years instead of seven years rigorous

imprisonment with all relevant benefits available to the accused under the provisions of Section 428 of the Code of Criminal Procedure. If the appellant has served the sentence then appellant be set at liberty forthwith, if not required for any other purpose or in any other case. Order and Direction accordingly. The Registry is directed to send the writ of this Farad, forthwith, to the Jail Authorities where the appellant is at present serving the sentence.

(C.K.BUCH, J.)

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